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Supreme Court of the United States

OCTOBER TERM, 1967.

No. 259

GLEN CONNER,

Petitioner,

versus

CITY OF HAMMOND,

Respondent.

Petition for Writ of Certiorari to Review Judgment of the Twenty-First Judicial District Court for the Parish of Tangipahoa, State of Louisiana.

PETITION FOR CERTIORARI.

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No.

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Petition for Writ of Certiorari to Review Judgment of the Twenty-First Judicial District Court for the Parish of Tangipahoa, State of Louisiana.

PETITION FOR CERTIORARI.

OPINIONS DELIVERED IN THE COURTS BELOW.

MAY IT PLEASE THE COURT:

The Judgment of the City Court of Hammond whereby Petitioner was initially convicted of violating the Obscenity Ordinance of the City of Hammond and sentenced to pay a fine of $100.00 and costs or serve 30 days in jail is not reported. No separate opinion was delivered by the Court, the verdict ap-

pearing only in the Minutes of the City Court of Hammond of date May 5, 1965 (Appendix "A" page 27).

Appeal was lodged with the Twenty-first Judicial District Court for the Parish of Tangipahoa which Court affirmed the conviction and sentence of the City Court of Hammond. There is no reported opinion, the verdict appearing only in the Minutes of the Twenty-first Judicial District Court for the Parish of Tangipahoa of date December 1, 1966 (Appendix "B" page 29). The Court did render written Reasons for Judgment (Appendix "C" page 31).

The Judgment of the Twenty-first Judicial District Court for the Parish of Tangipahoa of date December 1, 1966, was amended by the Court on January 27, 1967, to the extent that the Court found that the October, 1964 issue of PLAYBOY magazine was not obscene. The Amended Judgment appears as Appendix "D" page 36.

The Judgment of the Twenty-first Judicial District Court for the Parish of Tangipahoa of date December 1, 1966, as amended on January 27, 1967, was further amended by the Court on March 8, 1967, to the extent that the Court found that "NUDISM TODAY—OFFICIAL CALENDAR" and "URBAN NUDIST—Issue 14" were not obscene. The Further Amendment of Judgment appears as Appendix "E" page 37.

Application for Writ of Certiorari and Review was filed with the Supreme Court of the State of Louisiana, which Court refused the Writs on March 27, 1967 (Ap-

pendix "F" page 38). The Refusal of Writs is reported unofficially in 196 So. (2d) 267 (March 27, 1967). The official Louisiana Reports citation is not yet available.

JURISDICTION.

The Judgment and Decree which Petitioner seeks to have this Honorable Court review is the Judgment of December 1, 1966, as amended on January 27, 1967, and as further amended on March 8, 1967, of the Twenty-first Judicial District Court for the Parish of Tangipahoa.

Following the rendering of Judgment of December 1, 1966, Petition for Rehearing was applied for (Tr. 143) and was refused as reflected by the Minutes of the Twenty-first Judicial District Court for the Parish of Tangipahoa of date December 1, 1967 (Tr. 147). (All transcript references quoted in this Petition, except where otherwise indicated, are references to the duplicate certified copy of the record in *City of Hammond vs. Glen Conner*, No. 48,635 Supreme Court of Louisiana, since the copy of transcript of the Twenty-first Judicial District Court and the Index thereto have not been completed at the time of the preparation of this Petition for Certiorari. The Louisiana Supreme Court record contains all documents and pleadings contained in the District Court record.)

Notice of Intention to Apply to the Louisiana Supreme Court for Writs of Certiorari and Review was filed with the District Court on December 1, 1966 (Tr.

152) and on the same date Order was entered by the Court staying the sentence pending the filing of Application for Writs and granting the Defendant until February 1, 1967, within which to file Application for Writs to the State Supreme Court. By Orders of the District Court of date January 27 and March 14, 1967, the time for filing Application for Writs to the Louisiana Supreme Court was extended through March 15, 1967.

On March 15, 1967 Writs of Certiorari and Review were lodged with the Supreme Court of Louisiana and on March 27, 1967, the Supreme Court of Louisiana rendered an Order Refusing Writs.

The jurisdiction of this Honorable Court to review the decision of the Twenty-first Judicial District Court for the Parish of Tangipahoa is conferred by the provisions of 28 U.S.C., Sec. 1257 (3) (June 25, 1948, c. 646, 62 Stat. 929), since the validity of a City Ordinance, a State Constitutional provision and a State Statute are drawn into question as being repugnant to the Constitution of the United States. It is further urged that the constitutional rights guaranteed to Petitioner under the First, Sixth and Fourteenth Amendments to the United States Constitution have been abridged by virtue of the Judgment and conviction initially in the City Court of Hammond and as affirmed on appeal by the Twenty-first Judicial District Court for the Parish of Tangipahoa.

That Writ of Certiorari in the instant case should be directed to the Twenty-first Judicial District Court

for the Parish of Tangipahoa (the intermediate State Court but the Court of last resort for purposes of this Petition for Certiorari), where the Supreme Court of Louisiana has refused Writs of Certiorari and Review is supported by the decisions of this Honorable Court in *Michigan-Wisconsin Pipe Line Co. vs. Calvert*, 347 U.S. 157, 74 S. Ct. 396, 98 L.Ed. 583 (1954) and *American Railway Express Co. vs. Levee*, 263 U.S. 19, 44 S. Ct. 11, 68 L.Ed. 140 (1923):

Pursuant to Rule 22 (1) of the Rules of this Honorable Court a Petition for Writ of Certiorari to review the Judgment of a State Court of last resort in a criminal case shall be deemed in time when it and the certified record required by Rule 21 are filed with the Clerk within 90 days after the entry of such Judgment.

As further indicated in *American Railway Express Co. vs. Levee, supra*, the limit of time for applying to the Supreme Court of the United States was from the date the Writ of Certiorari was refused (263 U.S. at pages 20-21, 44 S. Ct. at page 12). Writs were refused by the Supreme Court of Louisiana on March 27, 1967, (Appendix "F", page 38) and as reflected by certified copy of said Decree which is a part of the transcript.

THE QUESTIONS PRESENTED FOR REVIEW.

(1) Whether the magazines involved in this proceeding are afforded the protection of the First and Fourteenth Amendments to the United States Constitution.

(2) Whether Ordinance No. 439 C.S., of the City of Hammond on its face and as construed and applied, abridges freedom of speech and press and deprives persons, including Petitioner, of their liberties without due process of law contrary to the provisions of the First and Fourteenth Amendments to the United States Constitution, because:

(A) The Court below, in construing the Ordinance, applied arbitrary standards at variance with the standards enunciated by the Supreme Court in determining whether the distribution and sale of reading material is afforded the protection of the First and Fourteenth Amendments to the United States Constitution, and

(B) The Ordinance, on its face, established arbitrary standards at variance with and in contravention of those standards enunciated by the Supreme Court in determining whether the distribution and sale of reading material is afforded the protection of the First and Fourteenth Amendments to the United States Constitution.

(3) Whether, consistent with the due process requirements of the Fourteenth Amendment and the Constitutional Standards for judging obscenity as enunciated by the Supreme Court, a Judgment or conviction can be rendered against an accused without proof that the accused knew the contents of the ma-

terial, knew the publications to be obscene or believed the material involved violated the law.

(4) Whether the right to trial by jury, as guaranteed by the Sixth Amendment to the United States Constitution, is a provision of the Bill of Rights which is fundamental and essential to a fair trial in a First Amendment case and is made obligatory upon the States by the Fourteenth Amendment to the United States Constitution.

CONSTITUTIONAL PROVISIONS, THE CITY ORDINANCE AND THE STATE STATUTES INVOLVED.

This case involves the following Constitutional provisions:

(1) First Amendment to the United States Constitution providing:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

(2) Sixth Amendment to the United States Constitution providing:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which dis-

trict shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence."

(3) Fourteenth Amendment to the United States Constitution and more particularly the due process provision thereof, which provides in pertinent part as follows:

"Section 1 * * *; nor shall any State deprive any person of life, liberty, or property, without due process of law; * * *."

Ordinance No. 439 C.S., of the City of Hammond is involved in this case. Because of the length of this Ordinance, it appears as Appendix "G" page 39 of this Petition.

The following Constitutional Provisions of the State of Louisiana are involved in this case:

(1) Article 7, Section 36 of the Louisiana Constitution of 1921, as amended by Acts 1956, No. 607 and Acts 1958, No. 561. Pursuant to this Constitutional Provision, which appears as Appendix "H" page 42 of this Petition, all appeals from a sentence imposing a fine or imprisonment by a City Court shall be tried de novo and without juries with the District Courts having appellate jurisdiction.

(2) Article 7, Section 10 of the Louisiana Constitution of 1921, as amended by Acts 1958, No. 561, provides that the Supreme Court of Louisiana has jurisdiction on appeals in criminal cases only in those cases in which the penalty of death or imprisonment at hard labor may be imposed, or in which a fine exceeding $300.00 or imprisonment exceeding six months has been actually imposed. Article 7, Section 10 of the Louisiana Constitution is cited in full -- Appendix "I" page 43 of this Petition.

The following State Statute is involved in this case:

L.S.A.-R.S. 15:340 which provides:

"Every misdemeanor shall be triable by the Judge without the intervention of a jury."

STATEMENT OF THE CASE.

All Constitutional issues were raised initially in the City Court of Hammond and were reviewed on the trial de novo in the Twenty-first Judicial District Court for the Parish of Tangipahoa. Motion to Quash was filed in the City Court of Hammond on October 13, 1964 (Tr. 48). This Motion was based in part on the allegation that the Ordinance and Affidavit under which Petitioner was charged were unconstitutional and in violation of the First, Sixth and Fourteenth Amendments to the United States Constitution.

A Supplemental Motion to Quash the Amended Affidavit was filed on November 6, 1964 (Tr. 69) and again the provisions of the First, Sixth and Fourteenth

Amendments to the United States Constitution were urged.

As will appear from the Minutes of the City Court of Hammond of date March 3, 1965 (Tr. 115) original Motion to Quash and the Supplemental Motion to Quash were overruled by the Court.

On April 13, 1964, Motion for Trial by Jury was filed in the City Court of Hammond. Whereas the ruling of the Court does not appear in the Minutes of said Court, it does appear in Vol. 1, page 4 of the transcript of testimony in Proceeding No. 6771 of the City Court of Hammond in the matter entitled "*City of Hammond vs. Glen Conner*". The Court overruled the Motion for Trial by Jury "on the grounds and for the reason that the Laws of this State and particularly set forth and quoting:

> 'Every misdemeanor shall be triable by the Judge without the intervention of a jury. Therefore, this Court has no authority to, under the existing laws of Louisiana, grant a trial by jury.'"

This ruling of the Court was made on April 14, 1965. On that same date Application for Supervisory and Remedial Writs of Certiorari, Prohibition, Mandamus and Review to the City Court for the City of Hammond, State of Louisiana, were filed with the Supreme Court of Louisiana seeking trial by Jury (Tr. 103). The Application was denied (Tr. 107).

Certified copy of the record in No. 47,734 of the Supreme Court of Louisiana entitled "*City of Hammond vs. Glen Conner*" (relating to the Application for Remedial Writs, prior to the beginning of the trial and seeking a trial by jury has been filed together with this Petition for Certiorari).

On Appeal to the Twenty-first Judicial District Court for the Parish of Tangipahoa, which Appeal was on a trial de novo as provided by Article 7, Section 36 of the Louisiana Constitution (Appendix "H" page 42) all pleadings including the original and supplemental Motions to Quash were filed with the District Court as part of a "Motion for Filing of Pleadings on Behalf of the Defendant" (Tr. 123). The Motions to Quash were referred to the merits by the Court as appears at page 4 of the transcript of testimony in Proceeding No. 11,997 of the Twenty-first Judicial District Court for the Parish of Tangipahoa entitled "*City of Hammond vs. Glen Conner*".

As reflected by the Minutes of the District Court of date October 31, 1966, the Court overruled Motion for Trial by Jury made on behalf of Petitioner.

On October 8, 1964, the City of Hammond, on an Affidavit, charged the Petitioner, Glen Conner, with the following offense:

"Did sell obscene literature in violation of City Ordinance #439 C.S." (Tr. 44.)

On October 26, 1964, an Amended Affidavit was filed whereby the charge read verbatim as follows:

"Did intentionally sell or exhibit and had in his possession with the intent to sell or exhibit obscene magazines with the intent to primarily appeal to the prurient interest of the average person in violation of Section 1, Sub-sections B and C of Ordinance No. 439, C.S., of the City of Hammond, and did intentionally display nude pictures of a man, woman, boy or girl in his public place of business, said public place of business not being an art exhibit or art gallery, in violation of Section 1, Sub-section G of Ordinance No. 439, C.S., of the City of Hammond." (Tr. 67.)

In verdict rendered against Petitioner in the City Court on May 5, 1965, no particular magazines were specified as being obscene. On the appeal and trial de novo in the District Court the Judgment there rendered on December 1, 1966, also specified no particular magazines. However, by virtue of amendments to the Judgment, on January 27, 1967, and March 8, 1967, the Judgment of the District Court was amended to specifically declare that PLAYBOY and the two nudist publications (NUDISM TODAY—OFFICIAL CALENDAR and URBAN NUDIST) were not obscene.

Accordingly, since the Supreme Court of Louisiana has refused Writs the present status of the case is such that Petitioner stands convicted of a violation of the Obscenity Ordinance of the City of Hammond

with a specific declaration that three of the ten magazines forming the basis of the charge are not obscene.

The magazines that were the subject matter of the charge are the following:

ESCAPADE	—	December, 1964
DUDE	—	November, 1964
PLAYBOY	—	October, 1964
ROGUE	—	December, 1964
GENT	—	November, 1964
H.Q.	—	December, 1964
CAVALIER	—	October, 1964
KNIGHT	—	Vol. 41, Issue 9
NUDISM TODAY	—	OFFICIAL CALENDAR
URBAN NUDIST	—	Issue 14

The Magazines Are Afforded The Protection Of The First And Fourteenth Amendments To The United States Constitution.

It is respectfully submitted that the magazines which form the basis of the conviction of Petitioner are of a nature comparable to the magazines before this Honorable Court in *Austin vs. Kentucky*, No. 16 October Term, 1966 and *Gent vs. State of Arkansas*, No. 50 October Term, 1966, consolidated with *Redrup vs. State of New York* and reported as *Redrup vs. State of New York*, 87 S. Ct. 1414 (1967); and in fact, many of the magazines here involved do not go to the extremes in the treatment of sex as do some of the magazines in the aforesaid cases. It is submitted that

a review of the magazines themselves will indicate that these publications are protected by the First and Fourteenth Amendments from governmental suppression, whether criminal or civil, in personam or in rem as were the magazines in the *Austin* and *Gent* cases.

In this Honorable Court's per curiam in *Redrup vs. State of New York* rendered May 8, 1967, this Court indicated the varying views of the Justices of this Honorable Court as to what type of reading material, if any, is not afforded the protection of the First and Fourteenth Amendments to the United States Constitution against State action.

It is respectfully submitted that the magazines here involved do not meet the tests for obscenity followed by any members of this Honorable Court, that they clearly are not of such nature as to be proscribed by the State or any branch thereof civilly or criminally.

Arbitrary Standards Applied By Court Below.

In *Roth vs. United States*, 354 U.S. 476, 77 S. Ct. 1304, 1 L.Ed. (2d) 1498 (1957) as elaborated upon in *Jacobellis vs. State of Ohio*, 378 U.S. 184, 84 S. Ct. 1676, 12 L.Ed. (2d) 793 (1964) and as further explained in *Memoirs vs. Massachusetts*, 383 U.S. 413, 86 S. Ct. 975, 16 L.Ed. (2d) 1 (1966) it appears that this Honorable Court, at the very least, requires that three elements must coalesce in order for there to be a finding of obscenity, to-wit:

(A) The dominant theme of the material taken as a whole must appeal to a prurient interest in sex.

(B) The material must be patently offensive because it affronts contemporary community standards relating to description or representation of sex matters; and

(C) The material is utterly without redeeming social value.

The prosecution and its witnesses, both in the City Court and in the District Court, followed a novel course of procedure in attempting to carry the burden of proving to the Courts' satisfaction that the magazines were obscene. The witnesses made pronouncements as to the alleged obscenity of the magazines on the basis that they had never seen the magazines until they took the witness stand, that a casual perusal was sufficient to satisfy them that the magazines were obscene—despite the fact that many of the magazines contained lengthy articles and stories in addition to pictures. On the witness stand each witness would "thumb through" each of the magazines and would then pronounce his or her respective judgment thereon. In the District Court the first two witnesses were timed as they "thumbed through" the magazines. The first witness required twelve minutes to review ten magazines and the second witness required sixteen minutes (transcript of testimony in the District Court pp. 9, 36). Thereafter, it was stipulated that if additional witnesses were to be timed it would take them some fifteen to

twenty minutes to review all ten magazines by "thumbing through" them in the same manner as was the procedure with the first two witnesses. This Honorable Court's attention is particularly directed to transcript of testimony in the District Court at page 27 where the Attorney for the prosecution stated:

> "MR. CAUSEY:
>
> Please the Court. We will stipulate that our witnesses, none of our witnesses, to my knowledge, has read these things from cover to cover."

This fact is corroborated throughout the record by the testimony of the witnesses themselves (transcript of testimony in the District Court pp. 16, 88, 97, 98).

Counsel for Petitioner reserved Bill of Exception No. 1 (Tr. 161) when the Court overruled Counsel's objection to admissibility of testimony as to the contents of the magazines without witnesses first testifying that they had read the magazines in their entirety.

Thus, the witnesses were in no position to testify on "the dominant theme of the material taken as a whole" since they freely admitted that they had not read the material.

With regard to contemporary community standards, witnesses for Petitioner testified that in no

City, Town, Parish or County in the United States had these magazines been the subject matter of a charge of obscenity other than in the City of Hammond. If contemporary community standards in fact has reference to the Nation as a whole as suggested in *Jacobellis vs. State of Ohio, supra*, page 14, then it is apparent that this test was not met by the prosecution, for the witnesses for the prosecution were entirely from the environs of the City of Hammond and were not qualified as experts in the field of literature or any other calling that would give them special knowledge of the reading standards of the Nation at large.

Bill of Exception No. 3 was reserved when the Court overruled Counsel's objection to the giving of opinion evidence as to the prurient appeal of the magazines by persons not qualified as experts in any particular field that would give them such a wide degree of knowledge as to enable them to make such a pronouncement.

Witnesses for Petitioner testified as to the literary and artistic merit, the quality of the photographs and the humorous nature of many articles and cartoons appearing in the magazines and thus the argument could not and was not successfully made by the prosecution that the magazines were utterly without redeeming social value.

Accordingly, it is respectfully submitted that at the very least the three-fold test announced in

Jacobellis vs. State of Ohio, supra, page 14, and reiterated in *Memoirs vs. Massachusetts, supra,* page 14, were not met by the prosecution. Therefore, whatever standards were applied by the Court in making its determination were standards at variance with those established by this Honorable Court.

The Ordinance, On Its Face, Is Unconstitutional.

In the case of *Mishkin vs. State of New York,* 383 U.S. 502, 86 S. Ct. 958, 16 L.Ed. (2d) 56 (1966) this Honorable Court held that States are free to adopt other definitions of "obscenity" only to the extent that those adopted stay within the bounds set forth by the constitutional criteria of the *Roth* definition.

Ordinance No. 439 C.S., of the City of Hammond (Appendix "G" page 39) relates "primary appeal" to the intent of the defendant rather than to the materials. The Obscenity Ordinance of the City of Hammond is identical to the Obscenity Statute of the State of Louisiana, La.R.S. 14:106 with the exception of the numbering of the paragraphs and the penalty provision.

In commenting on the State Statute and the questions here raised, the author in 23 Louisiana Law Review, page 608 made the following observations:

"The test in Roth—appealing to prurient interest—is applied to the statutory description of obscene *materials,* while the Louisiana statute

utilizes the test only in defining *defendant's intent*; defendant must have the *specific intent* to primarily appeal to the prurient interest.* * *"

* * *

"This variance of the subject of the obscenity tests leads to another difficulty; on its face the Louisiana statute's requirement that there be a primary appeal to the prurient interest may seem to satisfy Roth's requirement that the material be considered as a whole to determine its dominant theme. However, since this primary appeal refers to the *intent of the defendant, not to the materials*, it could be argued the dominant theme of the materials is ignored.* * *" (Emphasis supplied.)

It is respectfully submitted that the *City of Hammond* in adopting Ordinance No. 439 C.S., and defining obscenity in terms of the intent of the seller or distributor rather than in terms of primary appeal of the material itself has enacted legislation that does not stay within the bounds set by the constitutional criteria of the *Roth* definition.

Accordingly, it is respectfully submitted that the said Ordinance is unconstitutional in that it fails to provide minimum protection in the distribution, circulation and sale of reading material within the intendment of the First and Fourteenth Amendments to the United States Constitution as interpreted by this Honorable Court.

Scienter.

In *Smith vs. People of the State of California*, 361 U.S. 147, 80 S. Ct. 215, 4 L.Ed. (2d) 205 (1959) as recently again affirmed by this Honorable Court in *Mishkin vs. State of New York*, *supra*, page 18, the Constitution requires proof of scienter to avoid the hazard of self-censorship of constitutionally protected material and to compensate for the ambiguities inherent in the definition of obscenity.

In the instant proceeding, Petitioner did not testify. There was no testimony by any witnesses for the prosecution to even remotely suggest that the Petitioner had knowledge of the contents of the ten magazines forming the subject matter of the charge against him. The Manager of the distributor in Baton Rouge, Louisiana, that distributes magazines to Petitioner testified that his company distributes approximately sixteen hundred different titles each month to the Petitioner (transcript of testimony in the District Court p. 205).

In the absence of further proof on the part of the prosecution, it would have to be assumed that the Petitioner has knowledge of the contents of a minimum of sixteen hundred different magazines and periodicals, and knew of the alleged obscenity of the seven on which he stands convicted, in order to reach a finding that the requisite scienter was present to such an extent as to support a conviction for the violation of the Obscenity Ordinance of the City of Ham-

mond. There is not a scintilla of evidence in the record that would support such a finding.

Thus, the very fundamental question is presented as to whether a retailer of magazines and periodicals, the free circulation, distribution and sale of which is protected by the First and Fourteenth Amendments to the United States Constitution can legally be convicted of a charge of obscenity without proof that he knew the contents of the material, knew the publications to be obscene or believed the material involved violated the law.

Trial By Jury In A First Amendment Case.

The Constitution of the State of Louisiana, Article 7, Section 36, prohibits a trial by jury in a criminal case that goes on appeal de novo to a District Court (Appendix "H" page 42).

L.S.A.-R.S. 15:340 specifically provides that "every misdemeanor shall be triable by the Judge without the intervention of a jury". The City Court Judge invoked this Statute in denying to Petitioner the right to trial by jury. Thus, under existing constitutional provisions and Statutes of the State of Louisiana and pursuant to the rulings of the Courts below, Petitioner was not afforded a right to trial by jury.

This Honorable Court recognized (although it did not pass upon) the question in *Quantity of Copies of Books vs. Kansas*, 378 U.S. 205, 84 S. Ct. 1723, 12 L.Ed.

(2d) 809 (1964) that the right to trial by jury in a First Amendment case is a substantial question.

In a dissenting opinion in *Kingsley Books vs. Brown*, 354 U.S. 436, 447, 77 S. Ct. 1325, 1331; 1 L.Ed. (2d) 1469 (1957) Mr. Justice Brennan in a dissenting opinion stated:

> "I believe the absence in this New York obscenity statute of a right to a jury trial is a fatal defect. * * *"
>
> * * *
>
> * * A statute which does not afford the defendant, of right, a jury determination of obscenity falls short, in my view, of giving proper effect to the standard fashioned as the necessary safeguard demanded by the freedoms of speech and press for material which is not obscene.* * *"

In *Singer vs. United States*, 380 U.S. 24, 85 S. Ct. 783, 13 L.Ed. (2d) 630 (1965) this Honorable Court traced the history of right to trial by jury from the days of "English Common Law" through "The Colonial Experience" and to "The Constitution and Its Judicial Interpretation" as of the current day. In that history this Honorable Court pointed out that in all but "petty offenses" a jury trial was a constitutional imperative, referring to federal criminal cases.

In *Gideon vs. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L.Ed. (2d) 799 (1963) this Honorable Court for the first time extended the provision of the Sixth Amendment to the United States Constitution providing for the right to counsel to an accused in a State criminal proceeding. This Honorable Court made it clear that a provision of the Bill of Rights which is "fundamental and essential to a fair trial" is made obligatory upon the States by the Fourteenth Amendment.

The Sixth Amendment to the United States Constitution also provides for the right to trial by jury.

It is respectfully submitted that the question really is whether a First Amendment case is in the category of a "petty offense"; for the rule in *Gideon* has even been extended to serious misdemeanors by holdings of the Federal Courts in *Harvey vs. State of Mississippi*, 340 F. (2d) 263 (1965) and *McDonald vs. Moore*, 353 F. (2d) 106 (1965), both decided by the United States Court of Appeals for the Fifth Circuit.

It is respectfully submitted that the suppression by the State, or a branch thereof, of written publications, which are presumed (until proved otherwise) to have the protection of the First Amendment to the United States Constitution is not merely a "petty offense". If it is not a "petty offense" then the guarantees of the Sixth Amendment to a trial by jury are equally as "fundamental and essential to a fair trial" as is the right to Counsel; and through the Fourteenth Amendment to the United States Constitution this right should extend to trial in First Amendment cases in the State Courts.

Accordingly, it is respectfully submitted that Petitioner, although asserting his right to trial by jury from the outset of this litigation and having been denied that right by the State Constitution, a State Statute, the Trial Court where the action was instituted, the District Court on Appeal and the Supreme Court of the State, has been deprived of his constitutional guarantees to a fair trial under the First and Fourteenth Amendments to the United States Constitution.

It is respectfully submitted, as evidenced by the foregoing facts that substantial federal questions are involved in this Petition for Certiorari. The very fundamental rights guaranteed by the First, Sixth and Fourteenth Amendments to the United States Constitution are involved in this case. It is submitted that Petitioner stands charged and convicted in an unconstitutional proceeding brought under an unconstitutional Ordinance and accordingly, it is respect-

fully requested that this Honorable Court grant Writ of Certiorari to review the Judgment of the Twenty-first Judicial District Court for the Parish of Tangipahoa pursuant to which Petitioner stands convicted to the end that the said Judgment and conviction might be reversed and set aside.

Respectfully submitted,

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